

INCLUSIVE POLICIES, EXCLUSIONARY PRACTICES: UNFOLDING THE PARADOX OF PROLONGED URBAN INFORMALITY DEBATES IN URBANISING NEPAL

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ABSTRACT

Social inclusion and poverty alleviation are central to the United Nations (UN) new urban agenda and Sustainable Development Goals (SDGs), especially Goal 11 on sustainable cities and communities. In Nepal, the goal of the National Urban Agenda is to “make cities and human settlements inclusive, safe, resilient, sustainable and smart to enhance their ability to provide decent jobs and adequate housing, infrastructure and services to the ever-growing urban population”. Against this backdrop, many international and national non-governmental organisations and the national federations of informal settlers in Nepal have been advocating for the rights of urban informal settlers to be included in the urban planning processes. In response, the Nepal government has formulated new policies to assess the “authenticity” of informal settlers and accelerate the informal to formal transition process. Drawing from the textual analysis of existing national policies, literature and media publications, in this paper, we document what (dis)connections and contradictions exist in the formal policies and interventions that the national government has designed for addressing urban informality issue and how they frame urban informality issues and the solutions to manage the same. Our analysis shows that although government policies are rhetorically inclusive and progressive, indicating a desire to resolve informality issues, policies issued by different ministries and departments are disconnected. We also find that the practices often contradict the policies, and attempts to secure transitions to formality are undermined by a failure to recognise the legitimate stake that informal settlers have in the process. We conclude by discussing how these contradictions and inconsistencies can potentially be redirected towards socially just urban transition and suggesting ways forward for addressing the protracted urban informality issue in Nepal.

Keywords: contradicting policies; inconsistent practices; informal settlers; politicising informality; risks; urban informality

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1. INTRODUCTION

Social inclusion and ending poverty are central to the new urban agenda (UN, 2017) and the Sustainable Development Goal (SDG) 11 that aims to “make cities and human settlements inclusive, safe, resilient and sustainable” and “ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030” (UN, n.d). This goal deserves global priority given that a large section of the urban population, particularly those residing in the informal settlements are deprived of access to adequate, safe and affordable housing and other basic infrastructure services. While there are socio-economic variations within the informal settlements (Sengupta and Sharma, 2006; 2009, Shrestha et al., 2021), a major defining characteristic of such settlements is lack of tenure security (UN-Habitat, 2007). Yet precisely defining and documenting the population and state of informal settlers is not possible due to the variation among the informal settlements and lack of base information for differentiating between “genuine” and “fake” settlers (Satterthwaite et al., 2020; Patel and Baptist, 2012; Shrestha et al., 2021). However, global estimates record that approximately one billion urban dwellers live in informal settlements and are identified primarily by their lack of legal rights to the land they occupy and poor-quality houses or shacks (UN-Habitat, 2006). Studies have further noted that the population of informal settlers is growing rapidly with rapid urbanisation, especially in low and middle-income countries (Satterthwaite et al., 2020; Mathur, 2014).

A study by the World Bank Group estimates at least 130 million South Asians live in informal settlements characterised by poor construction, insecure tenure, and underserviced housing plots (see Ellis and Roberts, 2016). In Nepal, the population of informal settlers is low³ compared to other South Asian countries (see Mathur, 2014). However, it is growing as land and housing in urban areas are very expensive and beyond the means of the majority of the urban poor (UN-Habitat, 2010; MoUD, 2016). Previous studies have noted that the majority of informal settlements are inhabited by “urban poor”, primarily depending on the informal economy (Lumanti, 2002; Tanaka, 2009). Such occupants do not have a formal land title and are labelled “informal” (GoN and ADB, 2010, p.6) and deemed “illegal” (GoN/NTNC, 2009, p.25; MoUD, 2017, p.16). While urban poverty is concentrated in the informal settlements, studies have also noted that the informal settlements are part of a larger “informal” land market often involving powerful well-connected real-estate interests (Hasan et al., 2013).

In Nepal, informal settlers’ identity, status, and interests are contested as they are characterised as “illegal” settlers encroaching on the public and private properties by mobilising their socio-economic and political connections while marginalising those most in need of land and shelter (GoN and ADB, 2010; Gallagher, 2016). Recognising the concentration of urban poverty in urban informal settlements on the one hand, and controversies about “fake” informal settlers on the other, the governments over the past several years have intervened and made policy responses to identify “genuine” informal settlers and manage urban informal settlements. However, there

³ According to a federation of informal settlers, there are five million informal settlers in Nepal (see also NPC, 2017). However, this number is not yet verified with the government records as the government is currently enumerating the population of informal settlers of the country by forming a high-level commission (see below).

is a need to better understand, document, comprehend, and communicate how these policies frame urban informality issues; what provisions they include to regulate, manage, and upgrade urban informal settlements; and how they relate to governmental actions performed for the same objectives. Drawing on the textual analysis of policy documents and media publications associated with urban informality issues, in this paper, we review and reflect on the formal policies and actions that aim to resolve urban informality, and show how the (dis)connections between policy and practices and contradictions within policies per se sustain informality in Nepal.

This brief introduction is followed by a review of literature on urban informality and how urban informal settlements and settlers are defined in the Nepalese context. Subsequently, we present the method of research and analysis adopted in this paper. In the next section, we outline the existing policies that deal directly with the urban informality issues and examine the three central government initiatives around eviction, relocation, and commission formation. This is followed by the discussion and conclusion section.

2. URBAN INFORMAL SETTLEMENTS

Informal settlements have become a prevalent manifestation of urbanisation in cities of developing countries (UN-Habitat, 2007). Such settlements are known by many different names (including squatter settlements, favelas, shacks, villas miseria, bidonvilles, and slums), and characterised by a variety of tenure arrangements (UN-Habitat, 2007; Zárate, 2016). Such variations preclude precise definitions of informal settlements. Generally, these settlements are labelled “informal” for their contravention with the formal rules, norms, standards, laws, and regulations on land ownership, land use, and buildings (Satterthwaite et al., 2020). The Organization for Economic Co-operation and Development (OECD, n.d.) defines informal settlements as “areas where groups of housing units have been constructed on land that the occupants have no legal claim to or occupy illegally”.⁴ Their illegality in lack of legal land title makes government agencies unable or unwilling to work with them. Consequently, they are usually excluded from state-led development and essential public services. Although slums and informal settlements are not necessarily the same, inadequate provision of public services, impoverished living conditions, and overcrowding have made many of these settlements akin to slums (Satterthwaite et al., 2020).

Intending to improve the living conditions in these settlements, the UN’s Millennium Development Goal (MDG) 7-Target 11 committed to reducing the population living in slums by 2020. The priority for improving the condition of informal settlements has continued in the SDG. Policies and practices to manage such settlements however widely mismatch. Often, city governments either ignore the informal settlements or demolish such settlements (ibid). Nonetheless, some city governments have worked successfully with the inhabitants of informal settlements on upgrading programs to secure tenure, improve housing, install needed infrastructure, and provide public services (ibid; Fernandes, 2011).

⁴ <https://stats.oecd.org/glossary/detail.asp?ID=1351>

In Nepal, informal settlers are commonly referred to as “*sukumbasi*”. A *sukumbasi* is “a person who has no house for shelter, no private land for cultivation and no other opportunities of earning a livelihood” (Karki, 2002, p.207). The early informal settlements in Nepal were mainly created by the rural population displaced by natural hazards and confined within their close geographical vicinity. In later years, informal settlements have been concentrated on marginal public land of different urban centres (Sengupta and Sharma, 2006). The National Urban Development Strategy (NUDS) 2017, which guides national urban development endeavours up to 2035, notes about 10% of the urban population resides in informal settlements and that the increasing trend of informal settlements is a major urban issue (MoUD, 2017). According to Society for Preservation of Shelter and Habitation – Nepal (SPOSH-Nepal), a federation of the informal settlers, Kathmandu Valley alone has over 35,000 informal settlers living in 54 different squatter settlements, many occupying the land for almost four decades. Some of these settlements are inhabited by permanent residents, with second and even third generations sharing the same shelter (Lumanti, 2008). Given the proximity of the majority of the settlements to the major rivers, many informal settlements and the settlers are highly vulnerable to frequent flooding and riverbank erosion (DWIDP, 2009; KVDA, 2015; Dangol and Day, 2017). Nepal is ranked tenth in the world in terms of relative physical exposure of the countries to fluvial flooding (Landell Mills Ltd in association with Jeremy Benn Associates Ltd, 2019) and climate change is likely to make the flood incidents more frequent and more intense (ibid). Increasing floods add risks particularly for the riparian informal settlers as their connotations as “illegal”, “encroachers” compel them to rely on self-help initiatives for protection against flooding (see Carrasco and Dangol, 2019).

Despite growing urban informality issues and their exposure to multiple disasters, government's attempt to address informality has been limited to those who are not only living on land without permission but also have no landholdings and cannot afford housing (including rental) elsewhere (Lumanti, 2002). But the proponents (of the rights) of informal settlers stress “*sukumbasis*”, in the urban context, are “squatters residing on *unauthorised* space, while they may still own land elsewhere in the country” (UN-Habitat, 2010, p.12). Recognising the authenticity of the informal settlers irrespective of their land ownership, however, starkly contrasts with the common discourse that informal settlers who own land elsewhere if not in the city are “fake landless” (GoN and ADB, 2010). Hence, the demands and decisions to address informality in Nepal continue to revolve around “legal legitimacy” (see also Shrestha et al., 2018) defined through the formal land ownership certificate (i.e., *lalpurja*) which are however distributed only after identification of the “authentic” informal settlers.

3. RESEARCH METHODS

This paper is based on a review and analysis of existing national policy documents and media publications related to urban informality. We reviewed existing national policies (see Table 1 and Table 2), and documented how these policies frame urban informality issues and solutions to manage the same. Additionally, we analysed the implementation of urban informality-related

policies in Nepal through a review of both the peer-reviewed and the 'grey' literature, and the media materials (news, blogs, opinions). We found that existing literature is mainly focused on Kathmandu Valley (KV). A review of the media materials helped us to transcend our analysis beyond the geographical limit of KV and bring forward the strategies that are taken by the local governments beyond the valley. We also reviewed the policy documents and media materials related to the recently formed land commissions, each of which claimed to be the most radical interventions in managing and regulating urban informal settlements. Additionally, participation of the first and the second authors in the national-level webinars⁵ organised on the urban land and housing issues also contributed to gaining insights on the diverse interpretations of the urban informality issues, and the policies and practices associated with these.

Epistemologically, our interpretation of texts or textual analysis is influenced by the hermeneutics interpretivism or approach (Bryman, 2012). Hermeneutics interpretation is a method to broaden our understanding through interpretation of texts (Stanford Encyclopaedia of Philosophy, 2020)⁶ in order to bring out their meanings from the perspective of its author, which in this study are, the government's institutions, policies, and the reporters of media. The hermeneutics approach also entails attention to the social and historical contexts within which the texts or policy documents and media materials in this study were produced. It is an iterative process involving interaction between subjective and objective analyses in decoding the meaning potentially hidden in a text (Lueger and Hoffmeyer-Zlotnik, 1994). During the process, insights are developed and thoughts are provoked (Smythe and Spence, 2012). In this paper, we have used this approach to succinctly present the social and historical context of growing urban informality issues and the formal interventions made to address them. This way of analysis helped us to reflect on the interrelations between the policies and practices and the implications they have for resolving the urban informality issue.

4. NATIONAL POLICIES IN RELATION TO URBAN INFORMALITY ISSUES

Although informal settlers and settlements in Nepal emerged from the rural (see Karki, 2002), their size and number have grown in both rural and urban areas of Nepal. Past socio-political conflicts of the country, primarily during the 1996-2006 Maoist insurgency, accelerated the growth in urban informal settlements (MoUD, 2014). Addressing the growing number of urban informal settlers, the Town Development Directives (TDD) 2005 introduced the policy to extract land from urban land development projects so it can be catered to the "low-income and (specially) excluded people" at subsidised rates and on an instalment basis. Low-income groups include families with income below the poverty line. The "(specially) excluded" groups include landless *sukumbasis*, those displaced by the state-led development projects, female-headed households, and families with disabled member(s). Government authorities often refer to this non-mandatory provision as an important step towards the inclusion of urban poor, both in formal and informal settlements.

⁵ "Safe Housing" organised by Lumanti on 24th September 2020; Right to housing on 18th May and the New urban policy (draft) on 30th May organised by Institute of Engineering. Participation in these webinars helped us in broadening our knowledge on urban informality issues. In this paper, we have only minimally used empirical material from these participations.

⁶ <https://plato.stanford.edu/entries/hermeneutics/>

However, implementation of this directive has been weak, and the expanding informal settlements remain a major challenge for the urban planners (MoUD, 2016). The National Urban Policy 2007 attributes the emergence of urban informal settlements to excessive increase in urban population and lack of institutional capacity to manage urban growth. In response, the government revised its Shelter Policy 1996 “to develop the concept of housing by including the families remaining below the poverty line and residing in unplanned and unsafe settlements” (MoUD, 2014) and introduced new shelter provisions. These State-sponsored shelter services primarily targeted the rural poor and marginalised (UN-Habitat, 2010; MoUD, 2016).⁷

In 2012, the Government of Nepal (GoN) introduced a new National Shelter Policy, which for the first time, explicitly defined the term *sukumbasis* as “families, who have settled as landless squatters by encroaching unregistered or barren land (*parti/ailani jagga* in Nepali) of the urban areas, land located at the banks of a river, unsettled slope, etc.” (National Shelter Policy, 2012). Owing to the lack of formal land title, the government policies overtly discouraged such squatter settlers and their settlements for being “informal” (GoN and ADB, 2010, p.6) and labels the informal settlers as “illegal” who encroach the public land (GoN/NTNC, 2009; MoUD, 2017). The Bagmati Action Plan (BAP) (2009-2014) stressed that riparian informal settlements are “illegal” and need to be controlled and relocated for the restoration and conservation of Bagmati civilisation (GoN/NTNC, 2009). As part of the implementation of this plan, the government has set a 20-meter setback area for the major rivers of the valley. Owing to their vulnerability to flooding, the Risk-Sensitive Land Use Plan (RSLUP) 2015 prepared by KVDA has also declared riparian environments as “risk areas”. The same plan recommends “double of the width of a river on both the sides should be regarded and maintained as a risk-sensitive area and not be utilised for purposes other than for open spaces”. In a similar line, KVDA-produced a 20-year Strategic Development Master Plan (2015-2035) for the Kathmandu Valley that envisions “there will be no informal settlements in vulnerable public lands” of the valley.

Nonetheless, the government, over the years, has been increasingly progressive and inclusive in terms of incorporating informality issues in policy documents. The 2015 Constitution stipulates “squatter” management as a joint responsibility of the federal, provincial and local governments.⁸ Additionally, the constitution has recognised the “right to housing for all” as a fundamental right. It aims to identify landless and squatters and rehabilitate them by providing housing or a housing plot for residence, and cultivable land or employment for their livelihoods, managing unplanned settlement and developing planned and well-serviced settlements. The national SDGs (2016-2030) aim to reduce the population living in slums and as squatters from an estimated population of 500,000 in 2015 to 125,000 by 2030 (NPC, 2017). In relation to implementing these policies, the local government has the responsibility to identify the “squatter” population, manage livelihood and housing for them and upgrade their physical environment (LGOA, 2017; MoUD, 2016).

⁷ In FY 2009/10, the government initiated the *Janata Awas Karyakram* (People’s Housing Program) to ensure housing for the poor and marginalised groups in the rural areas.

⁸ Administratively, Nepal, including a federal government, has been divided into seven provinces and 753 local governments called palikas in Nepal (293 municipalities/*nagarpalikas* + 460 rural municipalities/*gaunpalikas*). Palikas are the local governments, which have been further divided into 6,743 wards - lowest political and administrative unit of Nepal (<https://sthaniya.gov.np/gis/website/>).

Promulgating the Land Related Eighth Amendment Act 2020, the government has established a formal basis to identify informal settlers, such that landlessness is not mandatory for being formally recognised as an “informal settler”. As per the Act, informal settlers are of two distinct categories: landless squatters (*bhumihin sukumbasi*) and unplanned dwellers (*abyawasthit basobasi*). Landless squatters (and their family) do not own land and cannot afford to buy land in any part of the country. To qualify as unplanned dwellers, they should have been residing on the land for at least ten years when the act was promulgated (Article 52b and c).

Upgrading and relocation of informal settlements, land sharing schemes for low-cost housing, and infrastructure services for squatter populations are included in the strategic action plan of the national urban agenda. These inclusive policy frames could be important steps in improving access to housing and other services for the informal settlers and ensuring “a hygienic, beautiful, well-facilitated and safe human settlement, as well as a planned and sustainable urbanisation of the country” as envisioned by the National Land Use Policy 2019. The National Urban Policy 2020 (draft) however concerns legalising such “encroachment” would trigger more informal settlements (MoUD, 2020). Moreover, questions on the “genuineness” of informal settlers continue to pervade informal to formal transition policies and processes (GoN and ADB, 2010) as illustrated by the recent amendments to the land-related act and the rules (see Table 1) (see Rising Nepal, 2019). Table 1 summarises national policies which deal with informality issues in both rural and urban contexts while Table 2 summarises how various urban policies frame and deal with growing urban informality issues.

Table 1. National policies addressing informality

The 2015 Constitution of Nepal	• Addresses the landlessness and squatter issues under the policies relating to social justice and inclusion (Article 51, clause 5, sub-clause 6) • Clarifies the state policy to identify the landless, squatters and rehabilitate them by providing housing, housing plots for residence, and cultivable land or employment for their livelihoods. • Entitles landless Dalit to land and housing for once in accordance with law (see clauses (5) and (6) of Article 40). • Aims to manage unplanned settlement and develop planned and systematic settlement (Part 4, Clause 51, (h) Sub-clause 11). • Recognises addressing landlessness issues and calls for coordinated actions of local, provincial and federal governments. (Schedule 9, the concurrent Powers of Federation, State and Local Level). • Endorses right to housing as a fundamental right (Article 37); (1) Every citizen shall have the right to an appropriate housing. (2) No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed except in accordance with the law.
Local Government Operation Act (LGOA) 2017	• Local governments can formulate and implement social security and poverty alleviation-related local policies, legislation and undertake activities in collaboration with institutions at the national, provincial and local levels.

	Local government has the responsibility to identify squatters and manage livelihood and housing for the squatter population (Clause 11 4 (h)).
The Land related (Eighth Amendment) Act 2020	- Defines landless squatters as “those who and whose family do not own land in any part of the country and cannot afford it from his/her income, resource or efforts and the term includes the individual and the family members dependent on the individual” (Article 18 sub-article 52b). - Sets the basis for the government to provide land to landless squatters either in the land they have been occupying or government land in any other location that the government decides as appropriate, without exceeding the land area limits allocated for a landless individual or family. - Outlines that the land of religious and cultural value, public land, land in risk-prone areas and in the river banks, land of importance for the local, provincial or federal government, trees covered forest area, cannot be provided to informal settlers. - Specifies that addressing urban informality does not necessarily involve land distribution and presents an arrangement of (communal) housing services for the “<i>Bhumihin sukumbasis</i>” as an alternative.
The Land Related (Eighteenth Amendment) Rules, 2020	- Specifies the area and the criteria for the provision of free and subsidised land for the landless <i>Dalits</i>, <i>Sukumbasis</i> and <i>Abyawasthit basobasi</i> for housing in the urban areas and for the agricultural use in the rural areas. - Specifies that <i>Abyawasthit basobasi</i> will not be provided alternative land nor compensation if the land they occupied is in the areas restricted by the Land Related Amendment Act 2020 (Section 41 c 2c). - The local governments have the responsibility to examine and assess the authenticity of the collected data and prepare a separate list of <i>Bhumihin Dalit</i>, <i>Bhumihin Sukumbasi</i> and <i>Abyawasthit Basobasi</i>. - Informal settlers will be classified based on the collected details and will be provided land for free, at a subsidised rate or denied land depending on their category, land area, and the location of the land they occupied. - The disqualified informal settlers will have to leave the land within a maximum of three months period.
Shelter Policy 2012	- Endorses the notion of “shelter for all”, including the families remaining below the poverty line and residing in unplanned and unsafe informal settlements. - Recognises that the situation of the informal settlements is wretched but, does not include these self-built “unsafe” and “illegal” settlements in any of the five categories of shelter it has been defined.⁹ Aims providing subsidised housing plots to low-income urban informal settlers. - Aims upgrading the informal settlements in the existing location and providing them the collective ownership of the land they occupy. Relocating the informal settlers settling in “unsafe” settlements and providing them alternative housing and collective ownership of the land in the relocated site if providing the “encroached” land is not possible (Section 4.7).

⁹ The five categories include Permanent (ownership based residential housing), Joint (jointly owned by two or more residents and use solely for residential uses), Mixed (houses for residential and non-residential uses), Rental (rented residential spaces without ownership) and temporary shelter made available as an immediate relief for people displaced due to disaster or conflict.

Table 2: National urban policies addressing informality

The New Urban Agenda of Nepal, 2016	• Recognises the rise in informal settlements with minimal basic services as a major issue. • Includes upgrading and relocation of informal settlements and land-sharing schemes for low-cost housing and infrastructure services for squatter population as a part of the housing and sustainable urban development plan. • Promotes private sector's investment in housing development and cooperative credit mechanism and community-led schemes for addressing the management of informal settlements. • Aims to form "Organised Settlement Commission" to prevent encroachment of public land, and to resolve the problem of unmanaged settlement and squatter. • Aims to implement slum and informal settlement upgrading and relocation programs within next 20 years.
National Urban Development Strategy 2017	• Is guided by five principles: sustainability, inclusivity, resilience, green and efficiency. • Aims to reduce the squatter settlements to 0% within the next 15 years. • Recognises cities need to be pro-poor and has a vision of cities and towns with the highest values of a society. • Discourages squatter settlements and encroachment on public land, aims to regulate and reduce informal settlement, and labels them as "illegal settlements". • Encourages private sector and cooperative mechanisms for the production of housing for the economically weaker sections.
National Urban Policy (Draft) 2020	• Reiterates informal settlers as a major problem of urban areas. • Aims to integrate the provision of housing and income opportunities for urban poor and informal settlers into the poverty alleviation initiatives. • Aims to ensure affordable housing for all and promotes private sectors' involvement in managing housing for the informal settlers. • Concerns legalising "encroachment" can trigger more informal settlements.
Bagmati Action Plan (BAP) (2009-2014)	• Stresses that riparian informal settlements need to be controlled and relocated for the restoration and conservation of Bagmati civilisation. • The government has formed a committee (currently named High Powered Committee for Integrated Development of Bagmati Civilisation (HPCIDBC) to execute this plan and improve the natural environment along the river.
National Urban Policy 2007	• Recognises urban poverty and urban squatter settlements are on rise. • Attributes the emergence of such problems to excessive increase in urban population and lack of institutional capacity to manage urban growth.
Town Development Directives (TDD) 2005	• Introduces the policy to extract additional land from urban land development projects and cater to the low-income and special excluded people at subsidised rates and on an instalment basis, with the land ownership transferred only after the payment of the full cost (Section 5.4.2). • Refers to the people lying below the national poverty line as "low-income" while the "special excluded groups" include "landless squatters", people displaced by governmental projects, female-headed households, and families with disabled people.

	• Stipulates up to 10% of the reserved plots¹⁰ in land pooling projects, at least 10% of the residential area in the Site and Services projects, and 10% of the residential plot and housing respectively in the land and housing projects developed by the private sector could be allocated for the low-income and special excluded people, but only with condition. • Such land plots and housing units can be sold to the low-income and the excluded groups at a subsidised rate and on an instalment basis, with the land ownership transferred only after the payment of the full cost (Section 5.4.2).
20-year Strategic Development Master Plan for the Kathmandu Valley (2015-2035)	• Seeks to establish a “safe, clean, organised, prosperous and elegant national capital” by 2035 • Strictly prohibits squatter settlements and envisions that “there will no more be informal settlements in vulnerable public lands” of the valley. • Aims to allocate 10% of land in the urban core for developing affordable institutional housing.

In addition to the above policies, the Poverty Alleviation Policy 2019 (see MoLCPA, 2019) also highlights growing urban poverty and improving access of urban poor to basic services as serious challenges to poverty reduction in Nepal. It enlists housing for the urban poor (which we will unfold in the section below) as a poverty alleviation program, but it does not explicitly deal with urban informality issues. Likewise, the government has enacted the Right to Housing Act 2018 which entitles every citizen to have the right to housing and obligates all three levels of the government to provide the “homeless” person and family with the housing facility through the progressive realisation of this right. The “homeless” have to make a self-declaration of not having land and housing in any part of the country and not being able to make provision for housing individually and with the efforts of his/her family. Surprisingly, anyone engaged in any income generation activity is not qualified for the housing services under this Act.

Such income-based reservation is expected to help in reaching the income-less groups, but it clearly overlooks the realities of the country where managing secure land and housing is extremely challenging for the majority of the lower-income groups.¹¹ This is more difficult in urban areas as urban poverty and inequalities are growing (Poverty Alleviation Policy, 2019). Booming land and housing cost is a major block in ensuring access to housing for the low-income and marginalised groups and subsequently in managing burgeoning urban informal settlements (MoUD, 2016). Nevertheless, as argued by a government representative during a webinar on the Right to housing,¹² although urban informal settlers do not have the title of the land where their homes stand, they are “not homeless” and hence do not qualify for the housing services under this Act.

¹⁰ Reserved plots are the land contributed by the landowners of a land pooling project for selling purposes to recover the cost of the project (K.C., 2015).

¹¹ Census 2011 noted over 70% of the income of the poor population is consumed in the arrangement of food (CBS, 2011). This illustrates the financial constraints that the low-income groups have, thereby motivating them to seek recourse in the informal settlements, which are risky but free or affordable.

¹² Organised by Institute of Engineering (IoE), Kathmandu – on 18th May, 2020 as a series of the National urban forum discussion.

5. FORMAL ACTIONS TO REGULATE AND MANAGE URBAN INFORMALITY

As analysed above, several of the state's key policies have recognised urban informality issues. In practice, given the weak implementation of land and housing policies, particularly those intended for ensuring shelter for low-income groups, the government has overlooked the urgency of managing informal settlements. The government authorities formally deny informal settlers access to state services as they lack "*lal purja*", the legal land ownership certificates required to secure state-led development (see also Ninglekhu 2012, 2017). Yet, the government has often tolerated growth in the informal settlements, despite their "illegal" status, and has tacitly approved their access to formal services (e.g. electricity, water, schools, telephone lines) (Shrestha, 2013; Sengupta and Sharma, 2009). Nevertheless, the government frames informal settlers as the "encroachers" and legalisation of their settlement as a risk (see MoUD, 2017; Draft National Urban Policy 2020). Several times, the government has opted to demolish settlements as a way to discourage such settlements (Brooks, 2016; Pandit, 2021). Given the controversy around the authenticity of informal settlers, the government has formed a number of commissions emphasising the lack of identification of "genuine *sukumbasis*" as the hindrance for managing informal settlements (see Rising Nepal, 2019). Formulating new policies and legislations and forming new commissions, the government has increasingly expressed its interest to integrate informal settlers into formal planning processes. While these inclusive efforts are ongoing at a slow pace, the government has intermittently evicted urban informal settlers and demolished their settlements reinforcing a sense of ambiguity in its approach to resolving informality issues. Some examples are given below.

a. Eviction

Forced eviction is against a range of the international human rights ratified by Nepal (see Khatiwada, 2012) and the spirit of the 2015 constitution which obligates the state to pursue policies related to "implementing international treaties, agreements to which Nepal is a party" (AI Nepal et al., 2019; MoUD, 2016; GoN, 2015, Article 51 b3). Nonetheless, the government has evicted and attempted to evict informal settlers, particularly those along river banks (GoN and ADB, 2010) several times. Eviction attempts sharply increased particularly during political turmoil, a movement branded by rival political leaders as "opportunistic bulldozer terrorism" (Sengupta and Sharma, 2009).

These government-led evictions are often legitimised by highlighting the urgency of improving urban environment, conserving environmentally sensitive lands, and as a response to public concerns about increasing encroachment on public land. Sometimes, the government has succeeded in removing and relocating informal settlers to the outskirts, such as in the case of Kirtipur Housing (see below; see also Sengupta and Sharma, 2009). More often, the settlers have resisted relocation, and (re)occupied the land (see below; see also Brooks, 2016). In a court case filed by representatives of the political party of landless against such an eviction, the court issued a 35-day extension on the stay order and directed the government to identify genuine *sukumbasis*

and arrange alternative shelter provision prior to eviction (Shrestha and Aranya, 2015). Forced evictions have, however, gained wide public support (Sengupta and Sharma, 2009). More recently, informal settlements have been evicted owing to the reason that they are located in risk-sensitive areas such as the riparian landscape. In reclaiming the riparian lands, the government has also occasionally evicted formal settlers, but primarily targeted the informal settlements. Eviction of the informal settlers continued even during the COVID-19 pandemic. For instance, a couple of households in Jhapa, eastern Nepal, were evicted by the municipal government during the lockdown imposed for containing the pandemic (Ghimire, 2021).

b. Relocation

Constitutionally, as elaborated in the earlier section, housing is a fundamental right in Nepal. Similarly, the constitutionally endorsed state policies relating to Social Justice and Inclusion (Article 51 Clause j Sub-clause 6) obligates the state to identify informal settlers and rehabilitate them by arranging housing and employment for their livelihoods. Kirtipur Housing Project was the first planned urban resettlement in the country (Sengupta and Sharma, 2009). This project came into the discussion only after displaced settlers sought the help of Lumanti Support Group for Shelter (Lumanti) in voicing their concerns against eviction during the early 2000s. This relocation project, a joint effort of Lumanti, informal settlers, Asian Coalition for Housing Rights (ACHR), Slum Dwellers International (SDI), and the Kathmandu Municipal Corporation (KMC) was financed by the Urban Community Support Fund (UCSF) (Tanaka, 2009). It was inaugurated in 2005 and rehabilitated 30 of the families displaced due to the construction of Bishnumati Link Road (BLR) in Kathmandu in the early 2000s (GoN and ADB, 2010; Lumanti, 2005). A key challenge was to identify the “genuine squatters”, which was done through self-assessment of the property, date of settlement, family size, and income of the displaced families (GoN and ADB, 2010). Among the 142 evicted families, only 62 were identified as “genuine squatters”, but only 30 resettled in Kirtipur Housing Project while others opted out as the relocation site was not suitable for them (ibid).

Similar efforts to relocate the urban informal settlers are ongoing in different parts of the nation. For instance, Biratnagar Metropolitan City has bought land for a metropolitan housing project that will construct integrated housing for 145 informal settlers of this city (Shah, 2021). Under this scheme, the informal settlers have to buy land in the allocated area and the local government will provide a house with two rooms, one kitchen, and one toilet for free.

In 2012, the Department of Urban Development and Building Construction (DUDBC) had also constructed a multi-storey housing at Ichhangu Narayan- a land pooling site in Kathmandu as a part of the resettlement program for the informal settlers (Kathmandu Post, 2016). The project was initiated after the government was condemned for evicting 250 squatters of Thapathali in Kathmandu without arranging alternative shelters for them. The informal settlers, however, resisted resettlement to the Ichhangu housing apartments, preferring to acquire land ownership of their current space of residence. Informal settlers stated that high rents, distance from the city

centre where most of them work, no public transportation and/or schools for their children at the resettlement sites, disruption in their social networks, and loss of employment opportunities were the primary reasons for their refusal to such resettlement plans (Brooks, 2016; Kathmandu Post, 2019). The proponents of housing rights explain that the state-led resettlement plan was not “demand-driven” and rather it was an imposition without consulting the representatives of informal settlers.¹³ As envisioned by TDD, the rehabilitation was expected to accommodate informal settlers in a state-invested land development project. However, it lacked the administrative, financial and political support needed for ensuring that the land is affordable for low-income groups (K.C., 2015). In addition, there was a sheer lack of support from the host communities who feared the entry of informal settlers would ruin the safety and security of their areas which led them to file a case against the relocation proposal (ibid). These financial and administrative hurdles, the social stigma against informal settlers, and the reluctance of informal settlers to shift away from their settlements continue to hinder the relocation of informal settlements that the formal policy documents have promoted as an effort towards the improvement of the *unplanned* settlements (see MoUD, 2016).

C. Land commissions for informal to formal transition

Invoking the lack of land ownership certificate as the underlying problem of informality and the distribution of land certificates as the solution, the government has formed several ad hoc commissions to resolve the problem at different times (see Annex 1; see also MoLCPA, 2020). Pokhrel (2018) noted a total of 15 such commissions were already formed until 2018 to handle encroachment, but none have managed to develop effective housing solutions. These commissions aimed to manage and upgrade informal settlements, develop planned and systematic settlements and prevent encroachment of government, public, and trust land. Furthermore, he remarked six of those commissions distributed a total of 46,694 *bighas* (13.55 hectares) of land to 154,856 families (ibid).

In 2020, the government formed a new Landless Squatters’ Problems Resolution Commission with the aims to distribute land with *lalpurja*- land ownership certificates to eligible individuals, and solve the informality issues “once and for all”, including those in the Kathmandu Valley (GoN, 2020; see also Hamrakura, 2020). During the first year of its formation, the land commission formed its district-level panels in all 77 districts and started collecting details of informal settlers and scrutinising their eligibility for state-earmarked land and housing provisions. Those close to the commission claimed it had signed agreements with 447 local units where 247,960 landless families and 922,801 informal settlers had already applied for land (see The Kathmandu Post, 2021). They stressed the commission was soon to distribute land to the “landless” when it was dissolved by the new ruling party in July 2021 (ibid). The new government has issued the new “National Land Commission Formation Order 2021” and formed a new commission repeating the usual trend of appointing those close to the ruling party as the members. The new land commission envisions initiating the distribution of land and land ownership certificate to landless

¹³ Webinar on Safe housing organised by Lumanti on 24th September, 2020.

Dalits, the landless squatters and unplanned dwellers soon with the highest priority for the landless Dalits (Rastriya Samachar Samiti, 2021). Owing to the frequent (de)formation of land commissions, land reform activists criticise that land commissions are the political platform of the ruling parties that get annulled with the change in the governments without much progress in addressing the informality (Rawal et al., 2016). Furthermore, land rights activists and the informal settlers alleged that such commissions have (repeatedly) distributed land to political cadres, local elites, and “fake” informal settlers who have (influential) connections and financial resources to appropriate “encroached” land while the authentic settlers remain marginalised (Gallagher, 2016; Adhikari, 2008; Rising Nepal, 2019).

6. DISCUSSION: TOWARDS SOCIALLY JUST TRANSITIONS?

Social justice demands a “two-dimensional” approach in which socio-economic redistribution is allied to the recognition of the particular historical and cultural circumstances of different social groups (Fraser and Honneth, 2003). These two pillars define social justice in terms of processes (how decision-making appraises and accounts for the views of different groups), and outcomes (whether and for whom material conditions change). The distributive aims of social justice are widely appreciated in terms of ensuring- at a minimum, access to minimum standards of (for example) shelter, food and housing. The recognition aspect of justice links materiality to meaning, asking whose voices, values, interests and identities are represented in how (for example) the decisions that aim to deliver those minimum standards are reached. Misrecognition devalues individuals or groups in social or institutional processes, leading to or compounding cultural domination, invisibility, or public stereotyping (Fraser, 1997). Misrecognition that arises from a failure to include, listen to, understand and respond to groups in decision making not only compounds marginalisation, but will likely lead to the failure to deliver outcomes that are valued by those groups. As such, recognition and redistribution provide a lens through which to understand the successes and failures of Nepal’s struggle to implement transitions from informal to formal urbanisation.

The need for distributive justice is implicitly acknowledged in the Town Development Directives (TDD) 2005, which introduced a mechanism for allocating land for the low-income groups at a subsidised rate. Following this, the policy documents have become increasingly progressive, recognising the need for minimum standards of shelter by promoting affordable housing and advocating against forced eviction. However, the provisions introduced in TDD are neither mandatory nor has the government provided the financial, administrative, police support needed for its implementation (K.C., 2015). As K.C. (2015) notes, none among the several land development projects that the government has undertaken has implemented the provisions promised in the TDD, implying that apparently, the inclusionary provision is more a political tool to showcase a commitment to redistributive social justice and never intended to be implemented. Subsequently, formal interventions for upgrading and relocating the urban informal settlers almost halted after the government failed in its attempt to relocate the settlers of Thapathali in Ichhangu Narayan

(Kathmandu) in 2012.

Ensuring housing and employment for informal settlers has been enshrined as a constitutional obligation of the government, leading to the Land Related Act 2020 and the formation of a new Landless Squatters' Problems Resolution Commission. Although the commission was criticised for heavily recruiting local leaders and cadres of the ruling party, it formed district-level panels, collaborated with local governments, and started developing an inventory of informal settlers. Additionally, the commission started tracking the land possession of the applicants (i.e., informal settlers) for investigating eligibility and distributing land systematically. Efforts by the commission to investigate increasing informality, and to formally integrate those eligible into coherent planning processes, prioritising the landless Dalits, are commendable. However, any *abyawasthit basobasi* (unplanned dwellers) residing in the informal settlements for less than ten years will have to leave the settlements without any compensation. Utterly disqualifying such settlers, without an alternative provision, risks exclusion of those who have most recently resorted to informal settlements, sustaining informality rather than resolving it "once and for all" (see GoN, 2020). This impediment from informal to formal transition, thus undermines progress towards the social justice commitments set down in the constitution and in the national SDGs. Moreover, the new government in 2021 dissolved the commission and formed a new commission involving its own cadres (Ratriya Samachar Samiti, 2021). The trend of sudden dissolution of an existing commission and swift formation of a new one for apparently the same activity, and the associated exercising of discretionary political authority, raises serious doubts about the commitment of successive governments to seek a permanent solution to proliferating informality (also see the annex for the commissions formed over the years).

While the above analysis points to a rhetorical commitment to, but only partial success (at best), in distributive justice, the processes underpinning efforts at informal to formal transitions potentially have a more lasting and insidious effect. The government approach to urban informal settlers is framed in terms of preventing "encroachment" of public land, resolving the problem of existing informal settlements, and encouraging private sectors' involvement in managing low-cost housing (MoUD, 2016, 2017; KVDA, 2015). While this suggests the policymakers have a real concern about managing urban informality, such a framing also implicitly reaffirms the dominant depiction of urban informal settlers as encroachers who have transgressed and need to be removed. This imagery is reinforced through policy, political pronouncements and in the media, undermining the social status of informal settlers and thereby contributing to the legitimisation of their evictions.

This framing is further underlined by recent legislation. The Land Related Eighth Amendment Act (2020) has outlined land types that cannot be provided to manage informal settlements, while the 18th Amendment to the Land Related Rule (2020) has further specified that the *abyawasthit basobasis* (unplanned dwellers) settling on land prohibited by the Act will not be granted any compensation or land in any alternative location. Yet, the majority of the informal settlements

in urban areas, including in the Kathmandu Valley, are located on the Act's prohibited lands, including public lands such as riverbanks, forests, and lowlands (see also Sengupta and Sharma, 2009; Lumanti, 2008). Besides disqualifying these settlers from the redistributive benefits of formalisation, these conditions can also be mobilised to legitimise evictions, paradoxically generating a new risk for the informal settlers in urban settings.

As noticed by researchers in other countries (for India see Auerbach and Thachil, 2018; Deuskar, 2019), political parties in Nepal have made land distribution a tool to expand their clientele and boost their votes (Ninglekhu, 2016). Informal settlers are also using their political connections to expand their settlements, increase their access to public services and legitimise those services (ibid; Shrestha et al., 2018). Yet, they are largely excluded in the formal planning processes. This denies them the opportunity to have their needs and interests, informed by their particular experiences of urbanisation, to be recognised in the planning process and incorporated into how the transition to formality is imagined and enacted. This question of recognition in formal processes is all the more significant as the amended Act has explicitly specified that addressing urban informality does not necessarily involve land distribution. Alternatively, it has hinted at arranging (communal) housing services for the "*Bhumihin sukumbasis*" (landless settlers). This can be an important alternative to the evictions and a means to ensure the constitutionally guaranteed "housing rights to all". However, past endeavours for relocating informal settlers (e.g., Kirtipur Housing and Ichhangu Narayan projects) show the successes and failures in relocation depend on how well the ambitions of the state, the informal settlers, and the host communities in the relocation sites are matched up. In particular, past efforts have shown that relocation alone is not adequate to overcome the deeply-rooted stigma associated with their identity and social positionality as "*sukumbasi*", and attached connotations as encroachers or polluters. This problem is only compounded by the rhetorical framing of informal settlers by the government, deepening the potential for discrimination and further misrecognition.

7. CONCLUSION

Aiming to unfold the paradox of prolonged urban informality issues and debates in Nepal, in this paper, we reviewed urban informality-related formal policies, literature, and media publications such as blogs, news, op-eds (re)defining and debating the socio-legal positionality of informal settlers in Nepal. Our review shows there have been paradigmatic shifts in informality-related policies in Nepal: (1) the constitutional commitment for providing shelter to "all" citizens that, indeed, includes informal settlers (see the GoN, 2015), (2) defining "categories" of informalities, that is, *bhumihin sukumbasi* or landless squatters and *abyawasthit basobasi* or unplanned dwellers establishing a formal basis to identify the "genuine" informal settlers (see the Land Related Eighth Amendment Act 2020), and (3) institutionalising the role and responsibility of all governments (local, provincial and federal) in order to develop an inventory, identify "genuine" *sukumbasi*, and resolve informality issues at all scales (see the Local Government Operational Act 2017). Notwithstanding the policy progress and formation of commissions to document and resolve

informality issues, policies that deem informal settlers as “illegal” and “encroachers” continue to dominate, particularly in managing urban informal settlements (see MoUD, 2017; GoN/NTNC, 2009; RSLUP, 2015). Under these policies, informal settlers-particularly those residing in the riparian areas are subject to eviction, judged to be a risk to invaluable local ecology and exposed to escalating flood hazards. While these legitimise eviction and privilege prevailing institutions with the power to evict informal settlers, “autonomous” land commission(s) are simultaneously formed to manage informality. This state of affairs underlines the disconnections in government policies. Such inconsistencies in formal policies and actions, and the insecurities and ambiguities these invoke among the informal settlers, stimulate them to seek political protection despite often being co-opted as “vote banks”. The vicious cycle of mobilising political positions to prevent formal actions in “managing” informality has not only deepened the hiatus of policy and practices but also added more complexity to informality issues in the country.

We see no straightforward solution for resolving proliferating informality issues in the country. However, the review and reflections on policies, policy goals, their (poor) implementation and the associated socio-political drivers and social justice consequences that we attempted in this article can instigate constructive debates. Stakeholders need the space to voice their perspectives and make concerted efforts to critically revisit and resolve tensions in the current policies and practices. Such co-learning processes are pivotal to aligning recognition justice with progressive distributive policies. They should ensure informed, inclusive and accountable approaches to innovating and implementing potential solutions to informality issues in the country. In this regard, past exercises undertaken to manage urban informality issues in the country offer important lessons. As past efforts show, neither the formation of land commissions nor isolated redistributive investments for relocation are sufficient to secure the meaningful participation of the informal settlers and – ultimately – offer resolution to the informality issue. It is indispensable that the formal institutional actors pre-define and delineate their regulatory authorities, thereby preventing institutional inconsistencies and gaining the trust of the informal settlers. It is equally important that such initiatives build on co-learning processes that enable the perceptions and ambitions of all the stakeholders-including the informal settlers- to be explored, understood, and reconciled. Given that recent legislation has framed the land commission as the primary authority to deal with informality issues in the country, and relocation of informal settlers as the potential solution to urban informality, the land commission should coordinate the institutional arrangements needed. These should be sufficient to enable informal settlers, or their representatives, to play a full and equal role in assessing and addressing the impacts of the changes in social networks and economic opportunities that arise from relocation, as this has proven pivotal to making relocation (and intended informal to formal transition) effective. Similarly, in assessing informal settlers and settlements, and in providing solutions, the land commission should also pay attention to the underlying social, economic, and political factors that interlink and sustain informality. These inclusive efforts can expedite informal to formal transition, which is essential to achieve the target set in the national SDGs and ensure that no one is left behind in progress towards safe and resilient (urban) development.

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ANNEX

The list of commissions formed since the restoration of democracy in 1990

Name of the commission	Formed in (year)	Annulled in (year)	Major activities
Squatters' Problems Resolution Commission under the Chairpersonship of Bal Bahadur Rai	1990	1991	This committee made decisions to relocate the landless squatters near the headquarters, highways, industrial areas, and the different project sites with the provision of providing the basic necessities like drinking water, health facilities, schools, etc., and taking a minimum annual charge for it.
Landless squatters' problems Resolution Commission (Chairpersonship of Saileja Acharya)	11/25/1991	12/15/1992	Though they had made policy-level decisions to identify the real squatters and hand over and register the lands to them, they could not implement any of those.
Landless squatters' problems Resolution Commission (reformed)	12/16/1992		This commission displaced the squatters and informal settlers from the large forest area of Bardia and initiated afforestation in that place. They could not successfully relocate the landless squatters which induced more problems.

			This commission had received applications from 263,738 squatters among which only 10,278 squatters were identified and were provided with temporary <i>nissa</i> (approval). Only 1,278 squatters were provided 1555 hectares of land. Similarly, this commission also provided land for constructing 1800 houses for the flood victims of Makwanpur, Rautahat and Sarlahi. These houses were built with financial support from Taiwan's Chuche Foundation. A three-membered committee was formed to prepare the landless residence program.
Landless squatters' problems Resolution Commission Landless squatters' problems Resolution Commission (Chairpersonship of Rishiram Lamsal)	11/25/1994	09/07/1995	District committee for this commission was extended to 72 districts. It submitted a report which indicated there are 2,510 landless squatters and 2,728 informal settlers in Kathmandu Valley (Kathmandu, Bhaktapur and Lalitpur). Among them 749 were identified as Putuwar, Poda and Chyame (oppressed local tribes). This committee distributed approximately 15,364.18 of land to 58,340 families.
Landless squatters' problems Resolution Commission (Chairpersonship of Buddhiman Tamang)	01/04/1996		These three commissions formed from 1995 to 1997 distributed approximately 239.07 hectares of land to 886 families of landless squatters and informal settlers.
Landless squatters' problems Resolution Commission (Chairpersonship of Chanda Shah)	06/03/1997		
Landless squatters' problems Resolution Commission (Chairpersonship of Buddhiman Tamang)	1997		
Landless squatters' problems Resolution Commission (Chairpersonship of Tarinidutta Chataut)	06/18/1998		Of 261,619 applications submitted to this commission 8,666 landless squatter families, 19,613 informal settler families and 3716 unidentified families were given approximately 4765.9 hectares of land.

Landless squatters' problems Resolution Commission (Chairpersonship Gangadhar Lamsal)	12/02/1999		It received 277,140 applications of which 6,202 landless squatters and 16,920 informal settlers were distributed approximately 6402.85 hectares of land.
Landless squatters' problems Resolution Commission	12/09/2009		This commission distributed 3287.44 hectares of land to 39,263 squatter families and collected revenue of NPR. 207,606,511.
Landless squatters' problems Resolution Commission (Chairpersonship of Bhaktiprasad Lamichhane)	12/06/2011	06/23/2013	This commission collected all the applications given by the squatters and informal settlers to the previously formed commission and found the records of 396,244 applications. The central commission printed 183,000 copies of ID card and sent nearly 100,000 copies to the different district commissions. The central commission conducted an interaction programme at four cities (Nepalgunj, Butwal, Hetauda and Biratnagar) including the participation of 25 district committees and landless squatters and informal settlers. The suggestion collected from the district level were presented at an interaction held at the national level on 07/09/2011.
Landless squatters' problems Resolution Commission	08/04/2014		This commission had formed its district committee in 72 districts apart from Kathmandu. This commission had collected applications from 861,000 squatters. On 01/22/2015 the high court instructed the commission to not implement its decision until any decision was made by the court against the complaint filed by lawyer Chandramani Poudel.
Systematic Settlement Commission, 2017	02/20/2017		It envisioned involving Minister or Minister of State for Ministry of Land Reforms and Management (MoLRM) as the chairperson and Secretary of
Systematic Settlement Commission, first amendment (Khagendra Basnyat was appointed as Vice-Chairperson)	08/31/2017	04/24/2018	Ministry of Forest and Soil Conservation, Urban Development, Home Affairs and MoLRM and three government-appointed expert members. It appointed Khagendra Basnyat, Jitendra Bahadur Bhandari and Prem Singh Bohora as the expert members for Kathmandu, Chitwan and Kanchnapur respectively.

			The district chairpersons were appointed but they could not start their activity as the commission was annulled by Nepal Government.
Landless squatters' problems Resolution Commission under the chairmanship of Devi Prasad Gyawali	03/22/2020	08/03/2021	It received applications from 1,180,761 families grouped in two categories as landless squatters and unplanned dwellers. Of the total applications, 247,940 were squatters and 932,801 fell in the category of "unplanned dwellers".
Landless squatters' and Problem Resolution Commission under the chairpersonship of Keshab Niraula	09/14/2021		Aims to distribute land prioritising the landless Dalits.

Source: MoLCPA, 2020 (see also Ghimire, 2021)

